STATE OF MICHIGAN

COURT OF APPEALS

ALISSA HARTEN, Personal Representative of the Estate of JOHN DAVID HARTEN, Deceased,

Plaintiff-Appellant,

v

GERALD RICHARD FRENCH,

Defendant,

and

FARM BUREAU INSURANCE,

Garnishee Defendant-Appellee.

UNPUBLISHED
April 15, 2003

No. 237375
Ingham Circuit Court
LC No. 99-089679-NO

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying plaintiff's motion for summary disposition and granting summary disposition in favor of garnishee defendant, Farm Bureau Insurance, under MCR 2.116(I)(2). This garnishment action stems from the shooting death of John Harten, stepson of defendant Gerald French. We affirm.

I. FACTS AND PROCEEDINGS

The shooting at issue occurred while French and the decedent were deer hunting on French's property. French was charged with killing or injuring a person by careless, reckless, or negligent discharge of a firearm, MCL 752.861, and reckless use, handling, or discharge of a firearm without due caution, MCL 752.863a. The former charge was dismissed, and French pleaded guilty to the latter charge.

When plaintiff filed her negligence complaint against French in the underlying action, French "requested that Farm Bureau defend and indemnify him pursuant to the terms of his insurance policy." Garnishee determined that its duty to defend and indemnify was negated by the insurance policy's criminal acts exclusion. Next, a default judgment was entered against French in the amount of $500,000. On August 5, 1999, a non-periodic writ of garnishment was

issued naming Farm Bureau Insurance as garnishee. In response, garnishee filed a disclosure denying that it was "indebted to [French] . . . for any amount . . . ." Garnishee explained that it was "not liable for garnishment because of one or more of the following" alternative reasons: (1) the criminal acts exclusion; (2) the limits of liability were $100,000; and (3) the garnishment judgment was unreasonable.

In plaintiff's motion for summary disposition, which was filed more than two years later in August 2001, plaintiff argued that garnishee's duty to indemnify French for the default judgment was not negated by the criminal acts exclusion in the French policy. In response, garnishee argued that, because plaintiff had not served interrogatories or noticed depositions within fourteen days after the disclosure was filed, "the statements made in the disclosure are deemed to be true." Garnishee also stated that plaintiff's failure to pursue the garnishment for nearly two years after the filing of the disclosure should "alone . . . be a basis to deny" plaintiff's claim.

Alternatively, garnishee argued that the policy's criminal acts exclusion relieved it of any obligation to indemnify French. Garnishee concluded that not only should plaintiff's motion for summary disposition be denied, but also that garnishee should be granted summary disposition under MCR 2.116(I). In reply, plaintiff argued that garnishee was "usurping the role of the Court to interpret the law and to apply the law to the facts . . . ." Further, plaintiff argued that because its motion for summary disposition served as "a pleading or motion denying the accuracy of the disclosure . . . ," MCR 3.101(M)(2), garnishee's assertions in the disclosure were not binding. Plaintiff contended that the fourteen-day time period applicable to the service of interrogatories or notice of deposition found in the subrule did not apply to this alternate manner of contending the disclosure. Finally, plaintiff argued that the trial court "should find" that the shooting "was an accident as a matter of law or allow the trier of fact to determine the plain ordinary meaning of the policy as it relates to this specific incident."

The trial court concluded that the matter was controlled by *Alyas v Illinois Employers Ins of Wausau*, 208 Mich App 324; 527 NW2d 548 (1995). In *Alyas*, this Court held that because the plaintiff had failed to contest the garnishee's disclosure within the time allotted by MCR 3.101(M)(2),

> the trial court was required to accept as true the facts stated in Wausau's garnishment disclosure. That disclosure stated that there was no liability inasmuch as no monies were owed under any policy of insurance by Wausau to the principal defendant. Because that fact must be accepted as true, summary disposition in favor of Wausau was appropriate. [*Alyas, supra* at 326-327.]

The court in the case at bar also rejected plaintiff's argument that her motion for summary disposition served as "a pleading or motion denying the accuracy of the disclosure," noting that plaintiff failed to support her position with legal authority.

II. ANALYSIS

The controlling issue on appeal, as framed by plaintiff, is whether a garnishee's disclosure precludes the trial court's application of the law to undisputed facts, and whether a

motion for summary disposition constitutes "a pleading or motion denying the accuracy of the disclosure," thereby precluding acceptance as true, the facts set forth in the disclosure. We hold that the trial court correctly found that garnishee's lack of indebtedness was affirmatively established through application of MCR 3.101(M)(2).

This Court reviews decisions on motions for summary disposition and issues involving the interpretation of a court rule de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 483; 637 NW2d 232 (2001). Garnishment actions are authorized by statute, MCL 600.4011(1), and a court's exercise of jurisdiction in such an action is governed by the Michigan Court Rules, MCL 600.4011(2). Plaintiff's argument on appeal focuses on MCR 3.101(M)(2), which reads as follows:

> The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. *The facts stated in the disclosure must be accepted as true unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by subrule (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure.* Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The defendant and other claimants added under subrule (L)(2) may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed. [Emphasis added.]

Subrule (M)(2) indicates that the "*facts* stated in the disclosure must be accepted as true unless the plaintiff" has taken certain actions within a specific period of time. Plaintiff argues that "MCR 3.101(M)(2) does not allow Appellee to usurp the role of the Court to interpret the law and to apply the law to the facts if the facts are undisputed." Essentially, plaintiff's argument is predicated on the time-honored, and often elusive, jurisprudential distinction between questions of fact and questions of law. Assuming that any adjudicative facts set forth in the disclosure are not disputed,[1] plaintiff's argument is that, while these facts are accepted as true, the issue of whether French's actions fall under the criminal acts exclusion in the policy is a question of law, with its resolution depending upon judicial application of the law.

In one sense, plaintiff is correct. In Michigan, issues of interpretation of an insurance policy – including those predicated on an assertion that coverage does not exist because of the applicability of a policy exclusion – have been consistently framed as questions of law to be resolved by the courts. *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 146; 530 NW2d 510 (1995); *Kruger v Lumbermen's Mut Cas Co*, 112 Mich App 511, 515; 316 NW2d 474 (1982). Indeed, the Michigan Supreme Court has framed the issue as a two-step legal inquiry. *Fire Ins Exch v Diehl*, 450 Mich 678, 683; 545 NW2d 602 (1996). First, a court must determine if a particular occurrence is covered under the general terms of the agreement. *Id.* Second, a

[1] Plaintiff, however, never specifically acknowledges that such facts should be accepted as true in this case. Presumably, this is because plaintiff later argues that, by filing a motion for summary disposition, she has in fact denied the accuracy of the disclosure.

court must determine "if coverage is denied under one of the policy's exclusions." *Id*. Accord *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996).[2]

However, plaintiff also argues that a general denial of indebtedness "should not end the matter fourteen . . . days later if what the denial does is frame a legal issue." Implicit in this assertion is the assumption that the denial of indebtedness is not a factual assertion. Such an assumption is at odds with *Alyas, supra*. The pertinent facts of *Alyas* are these:

> Plaintiff's decedent was killed in an automobile accident. Plaintiff thereafter obtained a consent judgment against Eddie's Bar, which allegedly had served alcohol to the driver of the other vehicle involved in the accident. Garnishee defendant Wausau was the excess liability insurer for Eddie's Bar. Plaintiff thereafter filed writs of garnishment against Wausau and others. Wausau filed a garnishee disclosure and an answer that denied all liability on several grounds. [*Id*. at 325.]

At issue in *Alyas* was whether summary disposition was correctly granted on the ground that the plaintiff failed to contest the disclosure in the manner set forth in MCR 3.101(M)(2). *Alyas, supra* at 326. The *Alyas* Court concluded that the grant of summary disposition in favor of Wausau was appropriate, reasoning as follows:

> [U]nder subrule M(2), the trial court was required to accept as true the facts stated in Wausau's garnishment disclosure. That disclosure stated that there was no liability inasmuch as no monies were owed under any policy of insurance by Wausau to the principal defendant. Because that fact must be accepted as true, summary disposition in favor of Wausau was appropriate. [*Id.* at 326-327.]

Alyas characterizes the denial that monies were owed under the policy as a "fact." In the case at bar, garnishee similarly denied that it was "indebted to [French] . . . for any amount . . . ." Thus, under *Alyas*, garnishee's denial of indebtedness is properly characterized as a "fact" that must be accepted as true, thereby rendering the grant of summary disposition appropriate.

III. CONCLUSION

In this case, it is not disputed that plaintiff failed to serve interrogatories or notice a deposition within fourteen days after the service of the disclosure. Indeed, no actions were taken to contest the disclosure for approximately two years after the disclosure was filed. Accordingly, garnishee's denial of indebtedness must be accepted as true. MCR 3.101(L)(1), (M)(2).

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[2] As with any question of contract interpretation, the goal of interpretation of an insurance policy is to determine what the parties actually agreed to, *Diehl, supra* at 683, or what the reasonable expectations of the parties were, in light of the language employed, *Gelman Sciences, Inc v Fidelity & Cas Co*, 456 Mich 305, 318; 572 NW2d 617 (1998), amended on other grounds sub nom *Arco Industries Corp v American Motorists Ins Co*, 456 Mich 1230; 576 NW2d 168 (1998).

Given our resolution of this case, we need not address plaintiff's remaining claims.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell